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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re EVAN W., et al., Persons Coming Under the Juvenile Court Law.	B237563
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. KERI W., et al., Defendants and Appellants.	(Los Angeles County Super. Ct. No. CK77129)

APPEAL from orders of the Superior Court of Los Angeles County. David R. Fields, Judge. Affirmed.

William Hook, under appointment by the Court of Appeal, for Defendant and Appellant Keri W.

Maureen L. Keaney, under appointment by the Court of Appeal, for Defendant and Appellant John K.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, Navid Nakhjavani, Deputy County Counsel, for Plaintiff and Respondent.

Mother Keri W. challenges juvenile court orders denying her Welfare and Institutions Code section 388 petition without a hearing and terminating her parental rights over children Evan W. and L.K.[1] L.'s father, John K., joins in mother's appeal.[2] We affirm the juvenile court orders.

FACTUAL AND PROCEDURAL BACKGROUND

In May 2009, the juvenile court asserted dependency jurisdiction over four-year-old Evan W. The court sustained a dependency petition asserting mother had a history of illegal drug use, she had recently tested positive for drugs, and her drug use placed Evan at risk of harm. The sustained petition also asserted mother and Evan's father had a history of domestic violence that endangered Evan. Evan was removed from mother's custody and placed in foster care. Mother was granted monitored visits and ordered to participate in individual counseling, parenting classes, drug counseling, and random drug testing. Her individual counseling was to address case issues, including domestic violence.

In January 2010, mother gave birth to L.K. Mother missed two drug tests after L.'s birth. She also appeared to be living at a "known narcotics home." The Los Angeles County Department of Children and Family Services (DCFS) detained L. in February 2010. A subsequent jurisdiction and disposition report indicated L.'s father, John K., had a history of illegal drug use and a conviction for spousal battery. John admitted he and mother fought "a lot" when she was drinking. However, he claimed mother stopped drinking when Evan was detained and they had since stopped fighting. In March 2010, the juvenile court sustained a dependency petition asserting mother had an 11-year history of drug abuse, mother failed to regularly participate in random drug testing, and John failed to protect L. when he knew or should have known of mother's history of drug use. The court removed L. from her parents' custody. She was placed in foster care. The court ordered a reunification plan for both parents that included monitored visits,

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[1] All further statutory references are to the Welfare and Institutions Code.

[2] John K. is not Evan's father. For clarity, we refer to John K. by his first name.

parenting classes, random drug testing, and counseling to address all case issues, including domestic violence.

Over the next nine months, mother complied with portions of the case plans. Mother visited the children regularly, although she sometimes missed visits and at times violated restrictions on who could be present at visits or where they could take place. Mother completed a substance abuse program, attending 52 group sessions and 50 12-step meetings. She completed a 16-week parenting education program and 10 sessions of individual counseling. Between July 2009 and November 2010, mother had 55 negative weekly random drug tests, with 12 unexcused "no show" tests.

However, DCFS opined that mother failed to acknowledge domestic violence was a problem in her relationship with John. Visitation monitors noted that during mother's and John's visits with L., John was "controlling and emotionally abusive of mother." Evan told a social worker and his therapist he feared John would hurt mother as he had in the past. Evan recounted an incident he observed in which John threw rocks at mother and stabbed another man with a tree branch. Evan also reported he saw mother punch and hit John. Although Evan asked that John not be present during his visits with mother, DCFS discovered John was present on at least one occasion in May 2010. Evan later revealed mother and John had directed him not to tell anyone John was at the visit. The stress of keeping this secret caused Evan to break into a rash. Mother later told Evan they could not have unmonitored visits because he "lied" to the social worker about John's presence.

When mother secured an apartment in June 2010, she told DCFS John did not live with her. Yet, a social worker saw John's vehicle on the property and a man's belongings in the apartment. Although mother later claimed she and John were no longer together, in September 2010, a social worker observed mother had recently had John's name tattooed on her chest. Later that month, Evan's foster parents saw mother at a supermarket with John. Mother also asked the foster father to drop her off at John's last known address.

After mother completed 10 required sessions of therapy, the therapist recommended mother participate in more intensive domestic violence counseling. The therapist reported "mother did not acknowledge her pattern of engaging in violent relationships nor did she acknowledge the detrimental emotional and physical threat that these relationships pose to her children." Despite mother's completed therapy, the therapist concluded mother "did not appear to gain much insight, as evidenced by her continued relations with violent men and her ongoing failure to protect her children." Mother refused to attend additional domestic violence counseling without a court order. In December 2010, the juvenile court terminated mother's reunification services in Evan's case.[3]

Between January and April 2011, mother failed to consistently drug test. She was terminated from the drug testing system, but did not immediately ensure that she was put back on the list for drug testing. She then missed tests, claiming she did not know she had been re-enrolled. At a contested section 366.22 hearing in April 2011 in L.'s case, mother testified that she had continued with individual counseling and she planned to discuss domestic violence in her counseling sessions. She attended Alcoholics and Narcotics Anonymous groups between one and three times per week. She testified she did not have additional sessions with her previous therapist because she had to pay for them; she also said the therapist did not tell her she needed more sessions. Mother denied any domestic violence occurred in her relationship with John. She claimed to have no personal knowledge that Evan was afraid of John. She admitted there was domestic violence in her relationship with Evan's father, and in one subsequent relationship. Mother also admitted the incident Evan had described occurred, but claimed it involved another man, not John. She opined Evan was confused and mistaken in his recollection of the incident. The juvenile court terminated mother's reunification services in L.'s case.

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[3] Neither father complied with their respective case plans. In August 2010, the juvenile court terminated reunification services for Evan's father. In September 2010, the juvenile court terminated John's reunification services as to Leigha.

Over the next five months, DCFS searched for an adoptive placement for the children, eventually finding a family interested in adopting both children in September 2011. Mother continued visiting the children during this period, but not without incident. In June 2011, DCFS reported mother sometimes asked that Evan call her, but then did not answer the phone when Evan called, leading Evan to have emotional and behavioral issues. In July 2011, DCFS reported mother seemed more focused on gathering information at visits to thwart adoption than she was on spending quality time with the children. In November 2011, DCFS reported Evan appeared happy in the adoptive placement and had developed a bond with the adoptive parents' two sons and the proposed adoptive parents, whom he called "mom" and "dad." DCFS indicated that, when asked, Evan eagerly said he would like to live with the adoptive family forever. L. "was observed to be very well adjusted to her new family and routine."

In November 2011, mother filed a section 388 petition. Mother asserted her circumstances had changed in that she had continued participating in weekly Narcotics and Alcoholics Anonymous meetings and had been sober since 2009. She had completed a domestic violence workshop series and participated in individual counseling. She had been approved for low-income family-appropriate housing that would be available in December 2011. Mother alleged she had regular income in the form of government benefits. She had looked into counseling services at Evan's school in the hope that they could eventually have conjoint counseling. Mother requested the children be placed with her or that the court reinstate reunification services. Mother also argued the juvenile court should reconsider its placement orders because DCFS had not engaged in actual efforts to place the children with a maternal relative. The juvenile court concluded mother's petition did not state new evidence or a change of circumstances, and the proposed changes would not be in the children's best interests. The court denied mother's petition without a hearing.

In December 2011, seven-year-old Evan testified at a contested section 366.26 hearing. Evan testified he was living at his "forever home," but also said he did not want to be with the adoptive parents forever. Evan testified he wanted to stay with mother.

However, he admitted he was worried that if he wanted the adoptive parents to be his parents, mother would "get in trouble." He spontaneously identified the prospective adoptive parents' two other children as his "brothers." A DCFS social worker testified that Evan loved his mother and was "bonded" with her, but the social worker believed Evan, like many other children, would thrive with a stable adoptive family. The juvenile court concluded the children were adoptable and the parent-child beneficial relationship exception under section 366.26, subdivision (c)(1)(B)(i) did not apply. The court terminated parental rights.

Relative Placement Background

In the detention report for Evan, DCFS indicated there were no relatives to consider for placement. The maternal grandmother reported she did not have a place to live and was staying at a motel. In early May 2009, the court ordered DCFS to evaluate Evan's maternal aunt, Bonita S., for possible placement. In June 2009, the court ordered DCFS to continue efforts to place Evan with Bonita S. In January 2010, DCFS reported it did not consider Bonita S. to be an appropriate placement because she lived with a roommate; DCFS was advised that the roommate had "mental issues and can become violent at times." Bonita S.'s home was also too small to accommodate Evan, and she smoked, which posed a health risk to Evan as he suffered from asthma.

When L. was detained in February 2010, DCFS reported the parents had "not provided sufficient information regarding relatives for placement consideration." In mid-February 2010, the maternal grandmother and Bonita S. submitted relative caretaker information sheets.[4] The juvenile court ordered DCFS to address placement of the children with relatives in the jurisdiction and disposition report. In a last minute information provided to the court in March 2010, DCFS reported that mother was asked if there were relatives available for placement, and mother "stated that there is no way [L.] is not going to be released to [mother] on 03/04/2010."

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[4] Bonita S.'s sheet did not provide requested information regarding how many people lived in her home, her address, or whether she had a criminal background.

In July 2010, DCFS reported that in late June 2010, mother's step-mother contacted DCFS and indicated she and the children's maternal grandfather wished to be considered for adoption of Evan "if necessary." The grandfather and his wife lived in Georgia. DCFS further reported the social worker asked mother if "there were any additional relatives she would like to be considered," and mother "said no." DCFS repeated the same information in an August 2010 interim review report. In a September 2010 status review report, DCFS noted that the grandfather and his wife were interested in adopting L. However, a concurrent planning assessment indicated a social worker attempted to contact the grandfather and wife three consecutive days in mid-August, but their telephone number was "unavailable." In December 2010, the juvenile court terminated mother's reunification services for Evan.

In a March 2011 status review report, DCFS indicated the grandfather's telephone number was disconnected. In early March 2011, social workers received a call from the boyfriend of maternal aunt Natasha W., requesting that Evan be placed with them.[5] The "uncle" explained that he called rather than Natasha W. because she feared she would not be approved for adoption due to a DUI on her record. However, Natasha W. later left a message for the social worker demanding that Evan be placed with her. DCFS reported neither had called again.

In late March 2011, DCFS renewed its efforts to consider maternal grandmother for placement. The maternal grandmother indicated she had temporary housing that would not be suitable for L. She was caring for an elderly man and living in his home. Maternal grandmother said she "might" move in with her sister. The social worker later called maternal grandmother to inquire about her living situation. Maternal grandmother did not call back. The social worker told mother she had been unable to reach maternal

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[5] The boyfriend identified himself as Evan's uncle.

grandmother. Mother said she would let maternal grandmother know. Mother also gave the social worker a list of five relatives to be considered for placement.[6]

At an April 6, 2011 hearing, DCFS informed the court it would recommend adoption as the permanent plan for Evan. Mother requested that maternal relatives be considered for placement. DCFS objected that since the court had terminated mother's reunification services for Evan, relative placement was no longer a priority. The court ordered that DCFS would have "discretion to continue to look at relatives for placement of [Evan]." On April 7, 2011, the court terminated mother's reunification services for L.

At a June 8, 2011 hearing, mother again asked that relatives be considered for placement. DCFS responded that it was looking for an adoptive placement for both children and it was not a priority to consider relatives. The court ordered DCFS to consider maternal relatives for placement. In late June 2011, DCFS called maternal aunt Natasha W. She did not return the social worker's call. L.'s paternal uncle informed DCFS he was not in a position to take care for L. In July 2011, mother and maternal grandmother informed DCFS the children's maternal great aunt and uncle, Darrin and Sylvia C., were interested in having the children placed with them. The social worker gave mother and maternal grandmother the adoptive social worker's telephone number so that the C.'s could make arrangements to be live-scanned or find out about the children. The C.'s did not call.

In a July 2011 section 366.26 report in L.'s case, DCFS detailed its efforts to assess a relative placement. Maternal great aunt Michelle W. was not interested in having either child placed with her. The social worker was unable to get in touch with the grandfather living in Georgia and his wife. The worker indicated their telephone was "not taking calls, thus a message could not be left for them." L.'s paternal aunt informed

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[6] There was evidence that DCFS eventually made contact or attempted contact with all of the relatives on the list to inquire about placing the children with them, except L.'s paternal grandmother. Although the paternal grandmother was mentioned in the record as providing information about John's whereabouts, there was no indication she ever expressed an interest in having L. placed with her.

DCFS she and her husband were not in a position to have L. placed with them. DCFS concluded: "At this time, DCFS has not received information for any relatives willing or able to care for [L.]. If [mother] is able to reach her parents in Georgia, she can provide them with the [adoption case social worker's] number and they can call collect." At a subsequent July 2011 hearing, the court indicated DCFS was to note the request to have maternal relatives considered for placement, and stated DCFS should explore all placement options as a potential adoptive placement had recently fallen through.

In August 2011, a DCFS social worker noted he asked maternal grandmother why she had not considered legal guardianship of the children. Maternal grandmother said DCFS had initially told her she could not have the children placed with her and "[n]ow she's a caregiver who takes care of an elderly man who is in his 70s and 80s. He doesn't want children in his home and there's a cat that he will not let go. Evan is not able to be around cats. [Maternal grandmother] lives in the home."

On September 6, 2011, the adoptive case social worker called maternal great aunt Sylvia C. Her telephone was not accepting calls. The social worker then called and left a message for maternal great uncle Darrin C. He had not returned the social worker's call by early October 2011. On September 13, 2011, DCFS received a telephone call from the maternal grandfather inquiring about having the children placed with him. On September 16, 2011, DCFS placed the children with the prospective adoptive family. On September 21, 2011, mother left a message for a social worker indicating she had located more relatives, but not providing telephone numbers. The social worker left a message in response informing mother: "all relatives can be interviewed but it would be better if she provided them with my phone number and have them call me."

In October 2011, the adoptive case social worker submitted a "last minute information" detailing the maternal grandfather's September 13th call in which he expressed an interest in having the children placed with him and his wife in Georgia. The information further recounted: "[The step-grandmother] indicated that she and her husband have been aware that the children were in foster care for the past two years, and previously spoke with a 'social worker' regarding having the children placed with them.

She says they were criminally cleared although this is not possible without a court order as they reside out of state. She says she and her husband never called DCFS back to follow up, even though they were aware that the children were still in foster care, as they just felt that 'everything' was going to work out. [¶] [Step-grandmother] states she has never met either child, [grandfather] has not seen Evan in over two years, and he has never met [L.]. They say it is too expensive for them to come to California just for a visit. [Mother] has had the [adoptive case social worker's] phone number for many months and could have provided her father and step-mother with CSW's phone number way before now. As reflected in the court report the [adoptive case social worker] has called, or attempted to call, all relatives whose names and phone numbers were provided by [mother]. The outcome of those calls is detailed in the continued .26 report. Given the children are now in a permanent home, DCFS is not exploring any other homes for the children." The case social worker opined in a last minute information that "the proposed out-of-state caregivers that mother has identified to DCFS have had no contact with these two young children during the last two years, and have no relationship whatsoever with these children, who have now started bonding with their current prospective adoptive caregivers." At an October 2011 hearing, the juvenile court denied mother's request for an investigation of the maternal grandfather and his wife pursuant to the Interstate Compact on the Placement of Children (ICPC).

In November 2011, mother filed her section 388 petition alleging, in part, DCFS failed to make actual efforts to assess relatives for placement. The juvenile court summarily denied the petition.

DISCUSSION

I. The Juvenile Court Did Not Abuse its Discretion in Denying Mother's Section 388 Petition Without a Hearing

Mother's section 388 petition had two grounds. First, mother contended she had evidence of changed circumstances—her additional efforts to address the case issues—that warranted a court order reinstating her reunification services or returning the children to her. Second, mother argued the court should assess her relatives for permanent

placement and order an ICPC investigation for the relatives living in Georgia. We find no error.

"A juvenile court order may be changed, modified or set aside under section 388 if the petitioner establishes by a preponderance of the evidence that (1) new evidence or changed circumstances exist and (2) the proposed change would promote the best interests of the child. [Citation.] A parent need only make a prima facie showing of these elements to trigger the right to a hearing on a section 388 petition and the petition should be liberally construed in favor of granting a hearing to consider the parent's request. [Citation.] [¶] However, if the liberally construed allegations of the petition do not make a prima facie showing of changed circumstances and that the proposed change would promote the best interests of the child, the court need not order a hearing on the petition. [Citations.] The prima facie requirement is not met unless the facts alleged, if supported by evidence given credit at the hearing, would sustain a favorable decision on the petition. [Citation.]" (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 806 (*Zachary G.*).)

"The juvenile court's determination to deny a section 388 petition without a hearing is reviewed for abuse of discretion. [Citations.] We must uphold the juvenile court's denial of appellant's section 388 petition unless we can determine from the record that its decisions ' "exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court." [Citations.]' [Citations.] . . . . 'After the termination of reunification services, the parents' interest in the care, custody and companionship of the child are no longer paramount. Rather, at this point 'the focus shifts to the needs of the child for permanency and stability' [citation], and in fact, there is a rebuttable presumption that continued foster care is in the best interests of the child. [Citation.] A court hearing a motion for change of placement at this stage of the proceedings must recognize this shift of focus in determining the ultimate question before it, that is, the best interests of the child.' [Citation.]" (*In re Brittany K.* (2005) 127 Cal.App.4th 1497, 1505 (*Brittany K.*).)

A. Mother's Changed Circumstances

The juvenile court acted within the bounds of reason when it summarily rejected mother's claim that her changed circumstances warranted a modification of previous orders. While mother may have alleged some changed circumstances, the juvenile court could reasonably conclude mother did not state a prima facie case that returning the children to her or allowing more reunification services would be in their best interests. To justify modification of prior orders, a "change in circumstances must relate to the purpose of the order and be such that the modification of the prior order is appropriate. [Citations.] In other words, the problem that initially brought the child within the dependency system must be removed or ameliorated. [Citations.] The change in circumstances or new evidence must be of such significant nature that it requires a setting aside or modification of the challenged order." (*In re A.A.* (2012) 203 Cal.App.4th 597, 612.)

Mother's section 388 petition alleged she was sober, she was participating in individual counseling, she had completed a domestic violence workshop, she anticipated having stable housing soon, and she had income in the form of government assistance. However, when the juvenile court terminated mother's reunification services for Evan and L., a significant issue was mother's refusal to acknowledge domestic violence in her relationship with John, and her refusal to accept that Evan had any reason to fear John. She had completed several sessions of individual counseling, and domestic violence counseling, prior to the termination of reunification services. But there were reports mother had not demonstrated an understanding of the problem, which was likely necessary for her to avoid reentering a violent relationship with John, or another violent relationship with a new partner. Mother's section 388 petition did not address this critical issue, except to state that mother had completed a domestic violence workshop. (*Zachary G., supra,* 77 Cal.App.4th at p. 808.) There were no additional reports from mother's therapist about her progress on the issue. (*Brittany K., supra,* 127 Cal.App.4th at p. 1507 [no abuse of discretion in denial of 388 petition that contained no independent evidence mother had overcome deficiencies that made her a continuing risk to children].)

Moreover, although mother's prospects for child-appropriate housing seemed promising, she was not able to immediately take custody of the children. The petition did not suggest the children could be immediately placed with mother. The children were bonding with their new prospective adoptive parents and had a chance at long-term stability. The trial court did not abuse its discretion in determining that disrupting that stability at this stage of the proceedings in the hope that mother would be able to take custody of the children, after additional months of reunification services, was not in the children's best interests. (*In re Jackson W.* (2010) 184 Cal.App.4th 247, 260 [summary denial of 388 petition not abuse of discretion where petition made no showing of how minors best interests would be served by depriving them of permanent home in favor of uncertain future]; *Brittany K., supra,* 127 Cal.App.4th at p. 1507.)

B. Relative Placement

Mother's section 388 petition asserted the juvenile court should continue the section 366.26 hearing to evaluate maternal relatives for permanent placement of the children. The trial court did not abuse its discretion in denying this claim without a hearing on the ground that the requested change would not be in the children's best interests.

Under section 361.3, "whenever a new placement of a dependent child must be made, preferential consideration must be given to suitable relatives who request placement. (§ 361.3, subds. (a), (d).) ' "Preferential consideration" means that the relative seeking placement shall be the first placement to be considered and investigated.' (§ 361.3, subd. (c)(1).) Preferential consideration 'does not create an evidentiary presumption in favor of a relative, but merely places the relative at the head of the line when the court is determining which placement is in the child's best interests.' [Citation.] [¶] '[T]he statute express[es] a command that relatives be assessed and *considered* favorably, subject to the juvenile court's consideration of the suitability of the relative's home and the best interests of the child.' [Citations.]" (*In re Antonio G.* (2007) 159 Cal.App.4th 369, 376-377 (*Antonio G.*).)

"Once a child is placed in the home of a nonrelative at the dispositional hearing, the relative placement preference does not arise again until 'a new placement of the child must be made.' [Citations.]" (*In re N.V.* (2010) 189 Cal.App.4th 25, 31.) However, "[t]here is no relative placement preference for adoption. [Citations.]" (*In re Lauren R.* (2007) 148 Cal.App.4th 841, 855 (*Lauren R.*).)

We are guided by the decision of our high court in *In re Stephanie M.* (1994) 7 Cal.4th 295 (*Stephanie M.*). In that case, after the juvenile court asserted jurisdiction, placed the child in foster care, terminated reunification services, and set a section 366.26 hearing, the parents made a section 388 motion requesting the child be placed with a relative. (*Id.* at pp. 306, 316-317.) The juvenile court concluded there was insufficient evidence produced to establish that a change of placement was in the child's best interests. The Court of Appeal reversed, finding the juvenile court did not give sufficient weight to the relative placement preference. (*Id.* at p. 319.) Our high court disagreed and concluded the juvenile court did not abuse its discretion. The court noted: "After the termination of reunification services, the parents' interest in the care, custody and companionship of the child are no longer paramount. Rather, at this point 'the focus shifts to the needs of the child for permanency and stability' [citation] . . . . A court hearing a motion for change of placement at this stage of the proceedings must recognize this shift of focus in determining the ultimate question before it, that is, the best interests of the child." (*Id.* at p. 317.) Our high court affirmed the juvenile court's decision that the child's best interests were served by her remaining with her foster parents, rather than being placed with her grandmother with whom she had no bond. (*Id.* at p. 318.)

Here, mother did not state a prima facie case that delaying the section 366.26 hearing for further assessment of maternal relatives would be in the children's best interests. Contrary to mother's claims, DCFS had contacted or attempted to contact numerous maternal and paternal relatives. These efforts were previously detailed to the juvenile court. In August 2011, maternal grandmother told DCFS she still did not have housing appropriate for the children, two years after Evan was initially detained. Other relatives did not contact DCFS, did not return DCFS calls, or indicated they were not

interested in having the children placed with them. Mother offered no allegations indicating further attempts to contact or assess these relatives would be in the children's best interests.

As to the maternal grandfather and his wife, mother also failed to assert delaying the section 366.26 hearing to assess these relatives for placement would be in the children's best interests. The grandfather and wife had no relationship with the children. The grandfather had not seen Evan in over two years. Despite making an initial contact with DCFS, the grandfather and wife failed to make any additional contact for over a year while the dependency proceedings continued. They initially asserted they could not visit the children in California due to the expense of the trip. Due to the invalid contact information DCFS had for the grandfather and wife for much of the case, any information gathering about the grandfather and wife would have begun from scratch, when an adoptive placement had already been identified. By the time mother filed her section 388 petition, the children had already started to bond with the prospective adoptive family. There is no relative placement preference for adoption, and, even when applicable, section 361.3 does not guarantee placement with relatives. (*Lauren R., supra,* 148 Cal.App.4th at p. 855; *In re Joseph T., Jr.* (2008) 163 Cal.App.4th 787, 798.) "[R]egardless of the relative placement preference, the fundamental duty of the court is to assure the best interests of the child, whose bond with a foster parent may require that placement with a relative be rejected." (*Stephanie M., supra,* 7 Cal.4th at p. 321.)

Indeed, mother's section 388 petition did not include any allegations that, if true, would establish that delaying the proceedings for further assessment of maternal relatives for permanent placement would be in the children's best interests. In *Stephanie M.*, the court concluded that with respect to the section 388 petition, "the burden was on the moving parties to show that the change was in the best interests of the child *at that time*. Evidence that at earlier proceedings the court had not sufficiently considered placement with the grandmother was not relevant to establish that at the time of the hearing under review, placement with the grandmother was in the child's best interests." (*Stephanie M.,*

supra, 7 Cal.4th at p. 322, fn. omitted.) The same is true in this case.[7] The juvenile court did not abuse its discretion in summarily denying mother's 388 petition based on the relative placement preference.

II. Substantial Evidence Supported the Juvenile Court Ruling that the Beneficial Child-Parent Relationship Exception Did Not Apply

Under section 366.26, subdivision (c)(1), the juvenile court must terminate parental rights if it finds by clear and convincing evidence it is likely the child will be adopted if parental rights are terminated. However, the court will not terminate parental rights if it determines doing so would be detrimental to the child based on one of several statutory exceptions. (§ 366.26, subd. (c)(1)(B).) The party challenging termination of parental rights bears the burden of proving that one or more of the statutory exceptions applies. (*In re C.F.* (2011) 193 Cal.App.4th 549, 553; *In re I.W.* (2009) 180 Cal.App.4th 1517, 1527.)

To establish the beneficial parent-child relationship exception, mother had to prove termination of parental rights would be detrimental to the children because (1) mother maintained regular visitation and contact with them, and (2) the children would benefit from continuing their relationship with mother. (§ 366.26 (c)(1)(B)(i).) "The 'benefit' prong of the exception requires the parent to prove his or her relationship with the child 'promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents.' [Citations.]" (*In re K.P.* (2012) 203 Cal.App.4th 614, 621-622 (*K.P.*).) "Because a parent's claim to . . . an exception [to termination of parental rights] is evaluated in light of the Legislature's preference for adoption, it is only in exceptional circumstances that a court will choose a permanent plan other than adoption. [Citation.]" (*In re Scott B.* (2010) 188 Cal.App.4th 452, 469.)

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[7] Mother did not appeal from any of the juvenile court's placement orders in which the children were placed with non-relatives.

"[T]he review of an adoption exception incorporates both the substantial evidence and the abuse of discretion standards of review. [Citation.] . . . . [T]he juvenile court's decision whether an adoption exception applies involves two component determinations: a factual and a discretionary one. The first determination—most commonly whether a beneficial parental or sibling relationship exists . . . is, because of its factual nature, properly reviewed for substantial evidence. [Citation.] The second determination in the exception analysis is whether the existence of that relationship or other specified statutory circumstance constitutes 'a compelling reason for determining that termination would be detrimental to the child.' (§ 366.26, subd. (c)(1)(B); [Citation.] This ' "quintessentially" discretionary decision, which calls for the juvenile court to determine the *importance* of the relationship in terms of the detrimental impact that its severance can be expected to have on the child and to weigh that against the benefit to the child of adoption,' is appropriately reviewed under the deferential abuse of discretion standard. [Citation.]" (*K.P.*, *supra*, 203 Cal.App.4th at pp. 621-622.)

We find no abuse of discretion in the court's determination that the bond existing between mother and the children did not constitute a compelling reason for determining that termination of parental rights would be detrimental to the children.[8] Evan testified that he loved mother, and social workers noted the bond between mother and the children. Mother's sister also testified about the loving relationship between the children and mother. But, as the juvenile court noted, mother's visits with Evan were still monitored, even after two years of dependency jurisdiction. In a 2011 report visit, a social worker noted that Evan and L. were slow to become comfortable with mother. Evan at times called mother by her first name. One social worker opined the children's attachment to mother was not very strong, in that they did not have emotional reunions or farewells at visits. L. had spent all but the first month of her life in foster care. There

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[8] The juvenile court did not explicitly address the existence of a beneficial relationship in its ruling, but concluded mother had not shown her relationship with the children promoted their well-being to such an extent that it outweighed the benefit they would gain in a permanent home.

was also evidence that despite his bond with mother, Evan was eager to live with the prospective adoptive family "forever." To the extent Evan's testimony in court contradicted the social worker's reports, it was for the trial court to assess the credibility of the evidence.

The juvenile court also properly considered "the 'positive' or 'negative' effect of interaction between parent and child . . . ." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575-576.) Mother's interactions with the children were not always positive. In the spring of 2011, mother sometimes canceled visits with Evan, causing him to become irritable, frustrated, and physically ill. In August 2011, a social worker noted mother canceled visits about 60 percent of the time, and Evan was sad both before and after visits. At a September 2011 visit, mother focused her attention on L., but also needed the maternal grandmother's help with the children. At two visits in October 2011, the monitor reported mother was angry, rude, loud, and brought visitors who were disruptive. Monitors had the impression that mother was less focused on having meaningful visits than she was on gathering information and coordinating visits with other family members. The juvenile court could reasonably infer from these problematic interactions that severing the parent/child relationship would not deprive the children of a substantial, *positive* emotional attachment to mother that would outweigh the benefits of adoption. (*Ibid.*) The trial court did not abuse its discretion in concluding it would not be detrimental to the children to terminate mother's parental rights.[9]

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[9] On appeal, John joined in mother's arguments. He also argued that to the extent this court reversed the order terminating mother's parental rights, the order terminating his parental rights should also be reversed. In light of our opinion above, we need not separately address John's appeal.

DISPOSITION

The juvenile court orders are affirmed.

BIGELOW, P. J.

We concur:

RUBIN, J.

FLIER, J.